

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

INTERNATIONAL PAPER COMPANY;
CITY OF TOMAH, WI,

Defendants.

Civil No.

COMPLAINT

Plaintiff, United States of America, by the authority of the Attorney General of the United States and through its undersigned attorneys, acting at the request and on behalf of the United States Environmental Protection Agency ("EPA"), alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Sections 106, 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9606, 9607 and 9613(g)(2). The United States seeks injunctive relief under CERCLA Section 106, 42 U.S.C. § 9606, specifically the implementation of EPA's selected remedy at the Tomah Municipal Sanitary Landfill Superfund Site in Tomah, Monroe County, Wisconsin (the "Site"). The United States also seeks the recovery, pursuant to CERCLA Section 107, 42 U.S.C. § 9607, of such costs that have been or will be incurred by the United States in response to the release and/or threatened release of hazardous substances at and from

the Site. The United States further seeks a declaration, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), that the Defendants are liable for future response costs that may be incurred by the United States in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to CERCLA Sections 106, 107 and 113(b), 42 U.S.C. §§ 9606, 9607, 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to CERCLA Section 113(b), 42 U.S.C. § 9613(b), because the claims arose in this district and the threatened and actual releases of hazardous substances occurred in this district.

DEFENDANTS

4. Defendant International Paper Company ("International Paper") is a New York corporation, with its principal place of business located at 400 Atlantic Street, Stamford, Connecticut. International Paper is the successor in liability to Union Camp Corporation ("Union Camp"), with whom it merged effective April 30, 1999.

5. Defendant City of Tomah, Wisconsin ("City of Tomah") is a Wisconsin municipal corporation located in Monroe County, Wisconsin.

6. Each of the Defendants is a "person" within the meaning of CERCLA Sections 101(21) and 107, 42 U.S.C. §§ 9601(21) and 9607.

7. Each of the Defendants is a person (or is a successor to a person) who owned or operated the Site at the time of disposal of hazardous substances at the Site, or is a person (or is a

successor to a person) who arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by that Defendant at the Site, within the meaning of Section 107(a)(2) or (3), 42 U.S.C. § 9607(a)(2) or (3).

BACKGROUND

8. The Tomah Municipal Sanitary Landfill Site covers approximately 40 acres along 24th Avenue, north of Tomah, Monroe County, Wisconsin.

9. From approximately 1959 to the present, the City of Tomah has owned the Site. From approximately 1959 to 1979, the City of Tomah operated the Site as a landfill.

10. Between approximately 1960 and 1979, Union Camp disposed of over 70,000 gallons of solvent wastes at the Site from its plastics and printing operations. These wastes contained volatile organic compounds and heavy metals.

11. The Site was placed on the National Priorities List on March 31, 1989.

12. “Hazardous substances” as defined in CERCLA Section 101(14), 42 U.S.C. § 9601(14), have been “released” within the meaning of CERCLA Section 101(22), 42 U.S.C. § 9601(22), at the Site, or there have been threats of such releases into the environment within the meaning of CERCLA Section 101(22), 42 U.S.C. § 9601(22).

13. The Site is a “facility” within the meaning and scope of CERCLA Section 9601(9), 42 U.S.C. § 9601(9), because it is an area where hazardous substances have been deposited, stored, disposed of, placed, or otherwise come to be located.

14. On January 11, 1994, in response to a release or a threat of a release of hazardous substances at or from the Site, Union Camp (International Paper’s predecessor), the United States

Veterans Administration (the "VA"), and the City of Tomah commenced a Remedial Investigation and Feasibility Study ("RI/FS") of the Site pursuant to 40 C.F.R. § 300.430.

15. Union Camp, the VA, and the City of Tomah completed a Remedial Investigation ("RI") Report on July 15, 1996 and completed a Feasibility Study ("FS") Report on July 15, 1997.

16. Pursuant to CERCLA Section 117, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the original proposed plan for remedial action on August 7, 1997 and August 11, 1997 in two major local newspapers of general circulation. EPA provided an opportunity for written and oral comments from the public on that proposed plan for remedial action.

17. The decision by EPA on the remedial action for the Site is embodied in a Record of Decision ("ROD"), executed on September 25, 1997.

FIRST CLAIM FOR RELIEF

(Injunctive Relief Under CERCLA Section 106, 42 U.S.C. § 9606)

18. Paragraphs 1-17, above, are realleged and incorporated herein by reference.

19. CERCLA Section 106(a), 42 U.S.C. § 9606(a), provides, in pertinent part,

... when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may ... secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest ... may require. The President may also ... take other action under this section including ... issuing such orders as may be necessary to protect public health and welfare and the environment.

20. Executive Order 12580 of January 23, 1987, delegated the President's functions under CERCLA Section 106(a) to the Administrator of EPA.

21. EPA has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened releases of hazardous substances from the Site.

22. Pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a), Defendants are subject to injunctive relief to abate the danger or threat presented by releases or threatened releases of hazardous substances from the Site.

SECOND CLAIM FOR RELIEF
(Recovery of Costs Under CERCLA Section 107, 42 U.S.C. § 9607)

23. Paragraphs 1-22, above, are realleged and incorporated herein by reference.

24. CERCLA Section 107(a), 42 U.S.C. § 9607(a), provides, in pertinent part that:

- (1) the owner or operator of a vessel or a facility, [or]
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which hazardous substances were disposed of, [or]
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing hazardous substances

* * * *

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for

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(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan . . .

25. CERCLA Section 113(g)(2), 42 U.S.C. 9613(g)(2), provides in pertinent part:

(2) Actions for recovery of costs

* * * *

In any . . . action [for recovery of costs] . . . , the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

26. Each of the Defendants is a person (or is a successor to a person) who owned or operated the Site at the time of disposal of hazardous substances at the Site, or is a person (or is a successor to a person) who arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by that Defendant at the Site, within the meaning of CERCLA Section 107(a)(2) or (3), 42 U.S.C. § 9607(a)(2) or (3).

27. There has been a release of hazardous substances at and from the Site.

28. The actions taken by the United States in connection with the Site constitute "response" actions within the meaning of CERCLA Section 101(25), 42 U.S.C. § 9601(25), in connection with which the United States has incurred costs.

29. As of the date of the filing of this complaint, the unreimbursed costs incurred by the United States pursuant to CERCLA Section 104, 42 U.S.C. § 9604, in "response" to the release or threatened release of hazardous substances at and from the Site total at least \$32,000.00, including the costs of "removal" and "remedial" actions performed or directed by EPA, as those terms are defined in CERCLA Sections 101(23), 101(24) and 101(25), 42 U.S.C. §§ 9601(23), (24) and (25). The United States will continue to incur response costs, including administrative and enforcement costs, as a result of the continued release and/or threatened release of hazardous substances at the Site.

30. The response costs incurred by the United States to date at the Site were incurred in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

31. The Defendants are jointly and severally liable to the United States under CERCLA Sections 107(a)(2) or (3) and 113(g)(2), 42 U.S.C. §§ 9607(a)(2) or (3) and 9613(g)(2), for all unreimbursed costs incurred and to be incurred by the United States in responding to the releases and/or threats of releases of hazardous substances at the Site, including enforcement costs and prejudgment interest on such costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that this Court:

A Order the Defendants to remedy the conditions at the Site that may present an imminent and substantial endangerment to the public health or welfare or the environment by implementing the remedial actions selected in the ROD for the Site;

B. Enter judgment in favor of the United States against each Defendant under CERCLA Section 107(a), 42 U.S.C. § 9607(a), finding each Defendant jointly and severally liable for all unreimbursed costs, including prejudgment interest, that the United States has incurred in responding to releases and/or threatened releases of hazardous substances at and from the Site to the date of judgment;

C. Enter a declaratory judgment, pursuant to CERCLA Section 113(g)(2), finding each Defendant liable for all future response costs incurred by the United States following judgment, in responding to releases and/or threatened releases of hazardous substances at the Site;

D. Award the United States its costs of this action; and

E. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

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Date: _____

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